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10/089,247	07/29/2002	Kenneth Michael Hall	1918-020512	3212

7590 11/07/2003  
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EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/089,247

Applicant(s)

HALL, KENNETH MICHAEL

Examiner

CARL D. PRICE

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### Drawings

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, proper cross hatching illustrating the “insulation 34” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “58” has been used to designate both the air inlet (figure 1) and the pop-rivet apertures (see page 7, last paragraph and figures 8 and 9). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

**Specification**

The disclosure is objected to because of the following informalities: Reference character "58" has been used to designate both the air inlet(s) (figure 1) and the pop-rivet apertures (see page 7, last paragraph and figures 8 and 9).

Appropriate correction is required.

**Claim Rejections - 35 USC § 112**

**The following is a quotation of the second paragraph of 35 U.S.C. 112:**

**The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

Claims 22-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example, in claim 1, line 3, there is no proper antecedent basis for "the inner side walls". In claim 25, in line 2, there is no proper antecedent basis for "the interior". In claim 2, there is no proper antecedent basis for "the reflective surface". Also, in claim 26, the use of the term "natural" to describe the reflective "inner metal surface of the closure member" causes the claim to be indefinite since it is unclear what meaning applicant intends to assign to the term "natural". Is applicant intending to claim that the surface inherently has, or includes natural properties, that are reflective because it is formed from metal?

**Claim Rejections - 35 USC § 102**

**The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless –**

**the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.**

**the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

**he has abandoned the invention.**

**the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.**

**the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.**

**the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.**

*The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.*

**Claims 22, 24: rejected under 35 U.S.C. 102(b)**

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Claims 22, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Rast, Jr. (U.S. Patent No. - 3683791).

Rast, Jr. shows and discloses (figure 8) a cooking apparatus including a dish (115 or 116) spaced from inner sidewalls of a combustion chamber (122). The cooking apparatus includes a base having an upper section (101,103) and a lower section (82) with an air inlet (76,77,80) there between. An air reservoir (at 101) is defined between the upper and lower base sections. A hinged closure member (10) is supported on the base and includes an inner reflective foil surface (see column 3, lines 65-67).

In regard to claims 22-24, the phrase “for combustible material” associated with the term “dish” is deemed merely a statement of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case the “dishes” of Rast, Jr. are capable of performing the intended use of holding combustible material.

**Claims 22 and 23: rejected under 35 U.S.C. 102(b)**

Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilbert (U.S. Patent No. - 3322060)

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Gilbert shows and discloses (figures 1-9) a cooking apparatus including a dish (42,54,56,64) spaced from inner sidewalls of a combustion chamber (78,92). The cooking apparatus includes a base having an upper section (104) and a lower section (102) with an air inlet (124) there between. An air reservoir (see all arrows indicating air flow about (42,54,56,64,78,92, etc.) is defined between the upper and lower base sections.

**Claim Rejections - 35 USC § 103**

**The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

**Claims 24-41: rejected under 35 U.S.C. 103(a)**

Claims 24-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert (U.S. Patent No. - 3322060) in view of Rast, Jr. (U.S. Patent No. - 3683791).

Gilbert shows and discloses (figures 1-9) a cooking apparatus including a dish (42,54,56,64) spaced from inner sidewalls of a combustion chamber (30,32,78,92). The cooking apparatus includes a base having an upper section (18,104,110) and a lower section (102) with an air inlet (124) there between. An air reservoir (see all arrows indicating air flow about (42,54,56,64,78,92, etc.) is defined between the upper and lower base sections. Gilbert includes glass fiber insulation on the interior surfaces of the upper and lower base portions. Gilbert however does not disclose a hinged closure member is supported on the base, to partially define the cooking chamber, and includes an inner reflective foil surface.

Rast, Jr. shows and discloses (figure 8) a cooking apparatus including a dish (115 or 116) spaced from inner sidewalls of a combustion chamber (122). The cooking apparatus includes a base having an upper section (101,103) and a lower section (82) with an air inlet (76,77,80) there between. An air reservoir (at 101) is defined between the upper and lower base sections. A hinged closure member (10) is supported on the base, to partially define a cooking chamber, and includes an inner reflective foil surface (see column 3, lines 65-67), a plurality of vent apertures (66) and a handle (72), in view of the teaching of Rash, Jr.



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In regard to claims 24-41, for the purpose of defining an enclosed cooking chamber (e.g. – an oven space) and to increase amount of heat directed onto food supported therein, it would have been obvious to a person having ordinary skill in the art to modify the base (18,104,110) of Gilbert to include a hinged domed closure member supported thereon wherein the closure includes an inner reflective foil surface, a plurality of vent apertures and a handle, in view of the teaching of Rash, Jr. In regard to claim 28, Gilbert, Jr. includes a holding means (50) in an opening of the combustion chamber which includes a plurality of air apertures (50). Also, in regard to claims 28, 30,32 and 41, for example, since the shape of the various elements forming the Gilbert cooking apparatus would necessarily depend on numerous design concerns such as the overall shape and size of the apparatus, desirable shipping weight and storage requirements, and aesthetic and other marketing concerns, etc., to make the dish and frame circular and cylindrical can be viewed as nothing more than a mere matter of choice in design absent the showing of any new or unexpected results therefrom over the prior art of record. In regard to claims 37 and 38, the metal insert (76,78,92), shaped to be received within the outer insulated upper base portion, is inherently reflective. In regard to claim 40, Gilbert includes a metal grid (140) received on the reflective insert (30,32,75,78,92).

**Allowable Subject Matter**

Claim 42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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**Conclusion**

See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30 am-3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1148/0858.



CARL D. PRICE  
Primary Examiner  
Art Unit 3749